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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, NW
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[REDACTED]

FILE: LIN 02 058 50601 Office: NEBRASKA SERVICE CENTER

Date: **SEP 12 2003**

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(iii)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

PUBLIC COPY

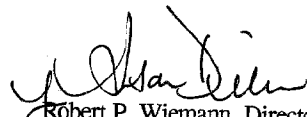
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is an Assemblies of God home mission. It seeks classification of the beneficiary as a campus missionary in training. The director determined that the petitioner had not established that the training is unavailable in the beneficiary's home country, and that the beneficiary already had significant training in the area. Additionally, the director stated that the training is primarily on-the-job and has no specific goals.

On appeal, the petitioner submits a brief stating that the director erred in making these determinations. The petitioner states that it was shown that the training was unavailable in the beneficiary's home country through letters from William Johnston and Robert Marks. The petitioner also submits a detailed schedule to support the claim that the training is not primarily on-the-job. The petitioner's brief also reiterates the specific goals of the training.

Section 101(a)(15)(H)(iii) of the Act, 8 U.S.C. § 1101(a)(15)(H)(iii), provides classification for an alien having a residence in a foreign country, which he or she has no intention of abandoning, who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment.

The regulation at 8 C.F.R. § 214.2(h)(7) states, in pertinent part:

(ii) Evidence required for petition involving alien trainee--(A) Conditions. The petitioner is required to demonstrate that:

(1) The proposed training is not available in the alien's own country;

(2) The beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed;

(3) The beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; and

(4) The training will benefit the beneficiary in pursuing a career outside the United States.

(B) Description of training program. Each petition for a trainee must include a statement which:

(1) Describes the type of training and supervision to be given, and the structure of the training program;

(2) Sets forth the proportion of time that will be devoted to productive employment;

(3) Shows the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training;

(4) Describes the career abroad for which the training will prepare the alien;

(5) Indicates the reasons why such training cannot be obtained in the alien's country and why it is necessary for the alien to be trained in the United States; and

(6) Indicates the source of any remuneration received by the trainee and any benefit, which will accrue to the petitioner for providing the training.

(iii) Restrictions on training program for alien trainee. A training program may not be approved which:

(A) Deals in generalities with no fixed schedule, objectives, or means of evaluation;

(B) Is incompatible with the nature of the petitioner's business or enterprise;

(C) Is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training;

(D) Is in a field in which it is unlikely that the knowledge or skill will be used outside the United States;

(E) Will result in productive employment beyond that which is incidental and necessary to the training;

(F) Is designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States;

(G) Does not establish that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified; or

(H) Is designed to extend the total allowable period of practical training previously authorized a nonimmigrant student.

The record, as it is presently constituted, contains: a detailed copy of the training schedule; a statement from William Johnston, the beneficiary's pastor in Swaziland, stating that the proposed training can not be found in that country; a statement by Robert Marks, national director of the Campus Minister in Training Program, stating that this specific training is required in order to become a licensed campus minister in Swaziland; and descriptions of the petitioner's program and mission.

The director stated in the denial that the petitioner had not sufficiently established that training is not available in Swaziland. The petitioner responded to the director's request for additional evidence by submitting a statement from William Johnston, the beneficiary's pastor in Swaziland, who is also the president of the Swaziland College of Theology. He stated that the proposed training is not available in Africa. The petitioner also submitted a letter with the appeal from Robert Marks, the National Campus Minister in Training Director. He stated that the training program is available only in the United States and that the training is required to become a campus missionary/pastor with the Assemblies of God. He also stated that the beneficiary was sent abroad to the United States for this training as it is not available in Swaziland. The petitioner has provided adequate evidence to establish that this training is unavailable in Swaziland.

The director also stated that the beneficiary "appears to have had training in both the United States and Swaziland and is requesting two additional years of training. The petitioner has not shown that the training has a specific goal." The goal of this training was stated in numerous places in the record: for the beneficiary to return to Swaziland as a licensed campus minister within the

Assemblies of God denomination. There is nothing in the record regarding the beneficiary having any training in Swaziland; she did have two years of previous training in the United States in Youth Ministries. The director did not specifically state that the proposed training is "on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field" as is prohibited by the regulations, although this seems to be implied by the director's statement. The beneficiary has had significant training; however, it is not specifically in the proposed field. The proposed training is to gain the required licensure to perform as a campus minister with the Assemblies of God denomination; without the program and the license, the beneficiary cannot work in that position within her church.

The final ground of the director's denial is that the training appears to consist primarily of on-the-job training. The director did not offer any information as to what led to that conclusion. The petitioner has submitted a detailed explanation of how the time in the training program is allocated, with a considerable portion to be spent in classroom activities. There is clearly an on-the-job component to training for campus ministry, as all of the skills required for this job cannot be learned through classes and books. This part of the training is primarily instructional and has been shown to be incidental and necessary to the training.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The decision of the director is withdrawn and the appeal is sustained. The petition is approved.